IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 899 OF 1996

Smt. Moharbai Dada Chatke ..Appellant

versus

The State of Maharashtra ..Respondents

Mr. Nitin Jamdar for the Appellant.

Mr. S. N. Gawade, AGP for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 8TH APRIL,2005

ORAL ORDER :

1. Heard counsel for the appellant and learned AGP for the State.

2. Appellant- claimant whose land was acquired and to whom the Reference Court awarded Rs.4,450/- per hectare, being dissatisfied by the said judgment, had filed this appeal.

3. The area of 6 H and 46 R from Village Liksal, Taluka Mohol, District Solapur was acquired by the State. SLAO awarded Rs.3,800/- per hectare. The claimant approached the Reference Court claiming Rs.25,000/- per hectare as compensation. Claimant

relied upon sale instance by examining the claimant. That sale instance is discussed by the court in paragraph 12. Notification under Section 4 was 11.4.1985. The sale instance was of May 1985, there price of the land was Rs.25,000/- per hectare. The Reference court however refused to rely upon that sale deed holding that the acquired land and the land which was the subject matter of the sale deed were far away. Then according to the claimant the distance was about 100 to 200 meters. However, the court took into consideration the gat numbers of both the lands and inferred that distance must be too much.

4. This approach of the trial court does not appear to be proper. The distance between the land cannot be decided on the basis of the gut number. When the claimant has on his own stated that the distance was about 100 to 200 meters and when the State did not adduce any evidence in rebuttal in that regard, the sale deed should have been taken into consideration for fixing the compensation.

5. Further, the learned AGP contended that the subject matter of the sale deed which was tried to be proved through certified copy at Exhibit 12 was a small piece of land, whereas acquired land is 6H and 46R i.e. near about 16 - 17 acres. He therefore

contended that the price for a larger piece of land and like 16 acres, the price fixed for very small portion of the land, cannot be equated. There is considerable force in the submission. However, the fact remains that the claimant is entitled for enhanced compensation and the enhancement granted by the Reference Court is not adequate.

6. In the circumstances looking to the price that came to be given for the land under Exhibit 12, Rs.12,000/- per hectare only would be adequate and proper. Therefore appeal filed by the claimant has to be allowed partly. Hence, order:

ORDER

. Appeal is partly allowed.

. Claimant will be entitled to compensation at the rate of Rs.12,000/- per hectare with proportionate consequential rise in the statutory benefits.

. No order as to costs.

8.04.2005 (D.G. DESHPANDE, J.)